



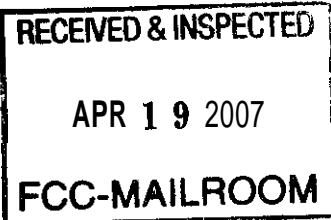
The Mobile Bay Audubon Society

P.O. Box 483
Fairhope, Alabama 36533

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April 12, 2007

Marlene H. Dortch, Commission Secretary
Federal Communications Commission, Office of the Secretary
445 12th Street, SW
Washington DC 20054



Dear Federal Communications Commission:

These comments are submitted on behalf of the XXX scientific and conservation organizations representing millions of American citizens on the FCC Notice of Proposed Rulemaking regarding Communications Towers and Migratory Birds, WT Docket No. 03-187, FCC 06-164. We urge the FCC to end the years of delay and adopt rules that require measures to prevent bird deaths at all existing and new communications towers.

The available research and data clearly indicate that mortality at the 110,000 communication towers is biologically significant for a number of avian species and that, in any event, the mortality clearly **has** a significant impact for bird species under **NEPA**, requiring FCC action to prevent/mitigate such impacts. In the reply comments submitted by the U.S. Fish and Wildlife Service on March 9, 2005 in the Notice of Inquiry proceeding, Dr. Albert Manville states that: "The population impacts to migratory songbirds (and other avifauna) and **impacts** to their population status **are** frightening and biologically significant." The FWS comments supported the analyses of avian mortality by Longcore et al. documenting the deaths of millions of migratory birds by species. The FWS again urged the FCC to adopt the FWS Tower Siting Guidelines. The Longcore et al. analyses demonstrate that even at the lowest end of estimated mortality, towers cause the deaths of at least 10,000 birds each of 19 species of U.S. FWS Birds of Conservation Concern. Two species have very high fatalities even at the lower end of estimated mortality: Bay-breasted Warbler at more than 150,000 fatalities/year, and Blackpoll Warbler at around 100,000 fatalities/year. More than 60 species of Birds of Conservation Concern are killed at towers.

In comments filed by Commissioner Michael J. Copps in the FCC **NPRM**, to which we concur, Commissioner Copps stated "There is simply no question that bird-tower collisions **are** a serious problem. The U.S. Fish and Wildlife Service tells us that millions of birds, perhaps as many as 50 million, die each year through such accidents. That is a sobering conclusion coming from the federal agency with the greatest scientific expertise when it comes to wildlife conservation and primary responsibility for protecting migratory birds. The situation imposes a grave responsibility on **this** agency, too, because of our important jurisdiction over tower painting and illumination – a responsibility to make sure that our rules and practices do not contribute to a needless toll of bird deaths."

Under existing federal laws and court decisions, the FCC has not only the legal authority to regulate these antenna structures, but the legal obligation to do **so**. The FCC's own laws and rules authorize it to require lighting changes and other measures for towers to prevent bird mortality. Further, NEPA, ESA, and the MBTA all require the FCC to adopt procedures and measures to prevent, or at least minimize, bird fatalities caused by FCC registered antenna structures. For example, the MBTA prohibits the taking of a migratory bird without a permit, even if unintentional, and the **FCC** violates this statute by its actions in registering towers that kill these birds. Case law is clear on this under rulings by federal courts, including the **U.S.** Circuit in which the FCC is located. The FCC has a clear statutory duty under these laws to prevent bird fatalities by adopting avoidance and mitigation measures known to prevent bird kills without in any way inhibiting the provision of telecommunication services.

Based on research and other scientific documentation that the FCC possesses from current and previous submittals, and based on the U.S. **FWS** Tower Siting Guidelines, we recommended the following measures for adoption by the **FCC** under this proposed rulemaking:

- 1) **An** applicant for an antenna tower shall submit a written declaration to demonstrate why they have no viable opportunity for co-location of an antenna and that they cannot practicably keep a tower structure under 200', thus avoiding lighting requirements in order to better protect migratory birds. Over 10,000 dead birds have been found at one antenna tower in one day.
- 2) If a new antenna tower structure must be built, and if the structure cannot practicably be kept under 200', the **FCC** shall require that the **FAA's** April **6,2004** Memorandum be followed and that medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred system over red obstruction lighting systems to the maximum extent possible without compromising safety. The FCC has proposed such a change. Birds are attracted to red steady-burning lights which are commonly used on towers, and on bad weather nights in migration, the birds may fly around the lights until they drop **from** exhaustion, striking guy wires, the tower structure, and even flying into the ground.
- 3) In cases where the antenna tower is to be located in urban/populated areas, within three nautical miles of an **airport**, or where for reasons of aviation safety, zoning requirements, or for other reasons the use of white strobe lights at night time is not possible, and the applicant demonstrates such, medium intensity red strobe lights shall be used exclusively.
- 4) All existing registered antenna structures that employ red steady burning lights for night time use shall be required to phase in the FAA preferred white strobe lighting system or the use of red strobe or fast blinking lights to replace red steady burning lights for night time use. This should occur when steady burning red lights on existing antenna structures burn out or otherwise need to be replaced. All such towers shall terminate the use of red steady burning lights for nighttime use

within five years of finalization of this rulemaking.

5) For any new antenna tower that is to be under 500' AGL, the applicant should not use guy wires unless certification is submitted by a qualified engineer that the structure cannot practicably be built as a monopole or of lattice design. In considering practicability, the applicant must demonstrate that guy wires are necessary because the tower cannot be built without guy wires because of safety concerns, significantly higher costs, or due to other engineering factors that require use of guy wires.

The use of red steady burning lights and guy wires are a lethal combination leading to the vast majority of bird deaths. The red steady burning lights attract the birds to swarm around the tower on bad weather nights. Nearly every mass mortality event of birds at tower structures is during the night and involves a guyed tower with red steady burning pilot warning lights. The Gehring et al. Michigan study documents that simply turning off red steady burning lights at night and using red or white pulsing lights, reduces bird fatalities by 71%. Towers at 400' can have 1.25 miles of guy wires and, in the Gehring et al. study, 90% of the avian mortality occurred from guy wires.

By adopting these simple measures involving co-location, use of strobe lights exclusively, ending the use of red steady burning lights, and keeping guy wires off of new towers where possible, bird deaths would be significantly reduced, if not eliminated, without in any way inhibiting the provision of communication services. We refer you to current and previous submittals by Longcore et al., American Bird Conservancy, U.S. FWS, and others in documenting the significance of the mortality, the legal basis for acting, and the mitigation measures we have urged above.

Respectfully Submitted,

Otilie Halstead --- Treasurer